

## **REMARKS**

In the Office Action mailed on March 18, 2009, all of pending claims 1-6, 9-23 and 25-27 stand rejected.

In order to expedite prosecution, claims 22, 23, and 25 have been cancelled. Applicants reserve the right to pursue these claims in a continuing application.

### **The Present Invention**

The present invention provides a coating composition suitable for food-contact coatings of food or beverage cans. In preferred embodiments, the coating composition of the invention is particularly suited for use as a coating on a beverage can end. Beverage can ends are typically formed by coating a flat metal substrate on at least one surface with a coating composition, which is then cured to form a crosslinked coating. The cured substrate is then deformed, typically via stamping, into a riveted beverage can end that includes a rivet for attaching a pulltab thereto for purposes of opening a scored spout portion of the beverage can end. The contour of the rivet on a beverage can end is much more extreme than any contour typically present on a can end. To be suitable for use with such a riveted beverage can end, a coating should exhibit suitable flexibility and adhesion to accommodate the severity of rivet fabrication, while also preferably exhibiting suitable corrosion resistance and feathering properties. Conventional can coatings typically do not possess the balance of properties required for this demanding end use.

In a preferred embodiment, the coating composition of the invention includes a special blend of polyesters that includes between about 60 and 90 weight percent of polyester resin having a Tg less than about 25°C and between about 10 and 40 weight percent of polyester resin having a Tg greater than 50°C. None of the cited references discussed below disclose a coating composition including this blend.

### **I. 35 U.S.C. 102 Rejections**

Claims 1-6, 9-15, 18-21 and 25-27 stand rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over WO 98/47974 (“Heyenk”) as evidenced by U.S. 6,235,102 (“Parekh”). Based on item 8 of the Office Action, it would appear that Parekh was cited to support the assertion that the composition recited by Heyenk would inherently be substantially free of mobile BPA and aromatic glycidyl ether compounds.

Independent claims 1 and 20 recite a can (claim 1), or a method of making a can (claim 20), in which at least one body or end portion is coated with a coating composition that includes a blend of polyesters including between 60 and 90 weight percent of polyester resin having a Tg less than about 25°C and between 10 and 40 weight percent of polyester resin having a Tg greater than 50°C.

First, as a threshold procedural matter, Applicants have carefully reviewed the Office Action and are unable to identify any assertion in the Office Action that Heyenk discloses a composition having the recited concentration of polyester resin having a Tg less than about 25°C. The Office Action appears to be silent with regards to this feature of the instant claims.<sup>1</sup> If the position of the Patent Office is that Heyenk discloses a blend having the recited concentration of polyester resin with a Tg less than about 25°C, then it is respectfully requested that the specific basis for that position be entered into the record.

It is respectfully submitted that Heyenk does not disclose a coating composition including between 60 and 90 weight percent of polyester resin having a Tg less than about 25°C. Heyenk discloses a coating composition that incorporates a polymer blend preferably having a majority of a “high” Tg polymer (Tg 45-50°C).<sup>2</sup> Nothing in Heyenk discloses a polyester blend including a majority of “low” Tg polyester, let alone a polyester blend including between 60 and 90 weight percent of polyester resin having a Tg less than about 25°C. As such, it is respectfully submitted that Heyenk does not disclose each and every element of the instant claims and, therefore, is not an anticipatory reference.

With regards to the alternate obviousness rejection, no reasoning is provided in the Office Action as to why a skilled artisan considering the Heyenk reference would have been motivated to modify the Heyenk composition to include between 60 and 90 weight percent of polyester resin having a Tg less than about 25°C. In view of the fact that Heyenk desires compositions including a majority of “high” Tg polymer (Tg 45-50°C) and all of the worked examples include a substantial majority of “high” Tg polymer, it is respectfully submitted that a skilled artisan

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<sup>1</sup> As discussed in MPEP 2131, to anticipate a claim, a reference must teach each and every element of the claim and, moreover, must teach the elements as arranged in the claim.

<sup>2</sup> Notably, the blends of the Heyenk worked examples include a substantial majority (i.e., 63-85 wt-%) of “high” Tg polyester and a substantial minority (i.e., 15-37 wt-%) of “low” Tg polyester. See the Table included in Applicants’ previous communication (i.e., “Response B”) for additional information.

would have no reason to modify the Heyenk composition to include between 60 and 90 weight percent of polyester resin having a T<sub>g</sub> less than about 25°C.<sup>3</sup>

## **II. 35 U.S.C. 103 Rejections**

### **A. Claims 16 and 17**

Dependent claims 16 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Heyenk in view of Parekh. The Office Action acknowledges that Heyenk does not disclose the addition of an acrylate copolymer having glycidyl groups and looks to Parekh to overcome this deficiency in Heyenk. However, even *arguendo* if the proposed combination were made, the resulting coating composition would not include all of the features of independent claim 1 from which claims 16 and 17 depend.<sup>4</sup> For example, neither reference discloses a composition including a blend of two or more polyesters having between 60 and 90 weight percent of polyester resin having a T<sub>g</sub> less than about 25°C. It is accordingly submitted that claims 16 and 17 are allowable over Heyenk and Parekh.

### **B. Claim 28**

Claim 28 stands rejected as being obvious over Heyenk as evidenced by Parekh in view of U.S. 5,252,669 (“Maska”). The Office Action acknowledges that the primary Heyenk reference is silent regarding the use of a phenoplast for cross-linking and looks to Maska to overcome this deficiency. Even *arguendo* if the proposed combination were made, the resulting coating composition would not include all of the features of independent claim 1 from which claims 16 and 17 depend.<sup>5</sup> As discussed above, neither Heyenk nor Parekh discloses a composition including a blend of two or more polyesters having between 60 and 90 weight percent of polyester resin having a T<sub>g</sub> less than about 25°C. Maska does not overcome this deficiency in Heyenk and Parekh. It is accordingly submitted that claim 28 is allowable over Heyenk, Parekh, and Maska.

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<sup>3</sup> Moreover, Heyenk does not disclose any polyester having a T<sub>g</sub> greater than 50°C, let alone a polyester blend that includes (i) between about 60 and 90 weight percent polyester resin having a T<sub>g</sub> less than about 25°C and (ii) between about 10 and 40 weight percent polyester resin having a T<sub>g</sub> greater than 50°C.

<sup>4</sup> Applicants traverse the assertion that a skilled artisan would have been motivated to make the proposed combination.

<sup>5</sup> Applicants traverse the assertion that a skilled artisan would have been motivated to make the proposed combination.

### **Conclusion**

In view of the foregoing, Applicants respectfully submit that all of pending claims 1-6, 9-21, and 26-28 are in condition for allowance. A notice to that effect is respectfully requested. The Commissioner is authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 50-2070.

Respectfully submitted,

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